

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Family Support
(Amended After Comments)

921 KAR 3:060. Administrative disqualification hearings and penalties.

RELATES TO: KRS Chapter 13B, 205.231, 7 C.F.R. 273.15, 273.17, 7 U.S.C. 2015

STATUTORY AUTHORITY: KRS 13B.170, 194A.010(2), 194A.050(1), 7 C.F.R. 271.4, 273.16

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.010(2) requires the Cabinet for Health and Family Services to administer income-supplement programs that protect, develop, preserve, and maintain families and children in the Commonwealth. KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 205.231 establishes the appeals process for applicants or recipients of public assistance. 7 C.F.R. 271.4 requires each state to administer a Supplemental Nutrition Assistance Program (SNAP). 7 C.F.R. 273.16 requires the agency administering SNAP to provide a hearing process for individuals accused of intentionally violating a SNAP regulation and to implement penalties and disqualifications for these violations. KRS 13B.170 authorizes the cabinet to promulgate administrative regulations that are necessary to carry out the hearing process to be followed in the Commonwealth. This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred and the penalties that shall be applied for an IPV.

Section 1. Administrative Disqualification Hearings. (1) Unless a different procedure is specified in this administrative regulation, an administrative disqualification hearing shall:

- (a) Be conducted in accordance with 921 KAR 3:070 and KRS Chapter 13B; and
 - (b) Include the issuance of an order in accordance with the Correspondence from the Office of the Attorney General dated April 5, 2012.
- (2) The cabinet shall retain:
- (a) The official record of an administrative disqualification hearing until all appeals have been exhausted; and
 - (b) A case record with an IPV disqualification indefinitely.

Section 2. Intentional Program Violations. (1) If the cabinet suspects that an individual committed an IPV, as defined in 921 KAR 3:010, the cabinet shall:

- (a) Initiate an administrative disqualification hearing; or
 - (b) If warranted by the facts of the case, refer the suspected IPV claim to the Office of the Inspector General (OIG) for investigation or referral for prosecution.
- (2) An administrative disqualification hearing may be initiated regardless of the current eligibility of an individual.
- (3) If the OIG determines that the IPV does not warrant investigation or referral for prosecution, the cabinet shall initiate an administrative disqualification hearing as specified in this administrative regulation.

Section 3. Notification. (1) Form FS-80 (EF) or (TR), Notice of SNAP Suspected Intentional Program Violation, shall serve as the notification to a household of the:

- (a) Cabinet's suspicion that an IPV has been committed;
 - (b) Amount and period of the overpayment for the suspected IPV; and
 - (c) Household's right to an administrative disqualification hearing.
- (2) The cabinet shall provide an individual suspected of an IPV a Form FS-80, Supplement A (EF) or (TR), Voluntary Waiver of SNAP Administrative Disqualification Hearing, which allows the individual to waive the right to an administrative disqualification hearing, with or without admitting an IPV was committed.
- (3) If the household does not return the FS-80, Supplement A (EF) or (TR), the cabinet shall schedule an administrative disqualification hearing in accordance with 7 C.F.R. 273.16(e)(3) and (4).
- (4) In accordance with KRS 13B.050, the administrative disqualification hearing notice shall be sent:
- (a) By certified mail, return receipt requested, to the individual; or
 - (b) By another method, such as electronic or first class mail, if the individual waives his or her right to certified mail delivery under KRS 13B.050.
- (5) The administrative disqualification hearing notice shall provide information as specified in 7 C.F.R. 273.16(e)(3)(iii).
- (6) In accordance with 7 C.F.R. 273.16(e)(2)(iii), the hearing officer shall advise the household member or representative that they may refuse to answer questions during the hearing.
- (7) The cabinet shall provide a household notice regarding the IPV determination in accordance with 7 C.F.R. 273.16(e)(9) and KRS 13B.120.

Section 4. Timeframes. (1) Within the ninety (90) day timeframe specified in 7 C.F.R. 273.16(e)(2)(iv), the cabinet shall:

- (a) Conduct an administrative disqualification hearing; and
 - (b) Issue a final order pursuant to the provisions established in 921 KAR 3:070, Section 14.
- (2) In accordance with 7 C.F.R. 273.16(e)(2)(iv), a hearing may be postponed:
- (a) One (1) time; and
 - (b) For no more than thirty (30) days.
- (3) If a hearing is postponed, the time limit specified in subsection (1) of this section shall be extended for as many days as the hearing is postponed.

Section 5. Hearing Attendance. (1) An administrative disqualification hearing shall be conducted in accordance with 7 C.F.R. 273.16(e)(4).

(2) If a household member or representative cannot be located or does not appear for the administrative disqualification hearing, the hearing officer shall:

- (a) Conduct the hearing without the household member or representative;
- (b) Consider the evidence; and
- (c) Determine whether an intentional program violation was committed based on clear and convincing evidence.

(3) In accordance with 7 C.F.R. 273.16(e)(4), the cabinet shall rescind a determination of an intentional program violation and conduct a new hearing upon an order of finding if the:

- (a) Household was not represented at the hearing;
- (b) Individual was determined to have committed an IPV;
- (c) 1. Individual, within ten (10) days of the scheduled hearing, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2); or
- 2. Individual, within thirty (30) days after the date of the notice, establishes good cause for failure to appear in accordance with 921 KAR 3:070, Section 8(2)(f), by showing nonreceipt of the notice of hearing; and

(d) Secretary or the secretary's designee is not considering the same matter.

Section 6. Benefits and Participation. (1) In accordance with 7 C.F.R. 273.16(e)(5), the participation of a household suspected of an IPV shall not be affected by the suspected IPV until a disqualification is implemented based on the:

- (a) IPV being substantiated by the final order or a court of appropriate jurisdiction;
- (b) Individual waiving the right to an administrative disqualification hearing by completing, signing, and returning the FS-80, Supplement A (EF) or (TR); or
- (c) Individual completing, signing, and returning the form FS-111, Supplemental Nutrition Assistance Program ~~[Deferred Adjudication]~~ Disqualification Consent Agreement, pursuant to Section 7 of this administrative regulation.

(2) If the cabinet's determination of an IPV is later reversed, the cabinet shall:

- (a) Reinstate the individual, if eligible; and
- (b) In accordance with 7 C.F.R. 273.17, restore benefits:
 - 1. That were lost as a result of the disqualification; and
 - 2. For no more than twelve (12) months.

Section 7. Deferred Adjudication. (1) The cabinet shall accept a completed form FS-111~~[-Deferred Adjudication Disqualification Consent Agreement,]~~ in a case of deferred adjudication pursuant to 7 C.F.R. 273.16(h).

(2) In accordance with 7 C.F.R. 273.16(h), the cabinet shall notify an individual signing an [a] FS-111 of the:

- (a) Consequences of consenting to disqualification;
- (b) Disqualification; and
- (c) Effective date of the disqualification.

Section 8. Penalties. (1) In accordance with 7 C.F.R. 273.16(b), an individual shall be ineligible to participate in SNAP, if the individual has:

- (a) Committed an IPV, as determined by:
 - 1. An administrative disqualification hearing; or
 - 2. A court; or
- (b) Signed a waiver of right to an administrative disqualification hearing or a disqualification consent agreement.

(2) The time periods for IPV disqualifications shall be implemented in accordance with 7 C.F.R. 273.16(b).

(3) In accordance with 7 C.F.R. 273.16(b)(11), the cabinet shall only disqualify the individual who meets the criteria specified in subsection (1) of this section, not the entire household.

(4) In accordance with 7 C.F.R. 273.16(b)(12), the cabinet shall hold the entire household responsible for making restitution on an overpayment, not just the disqualified individual.

(5) The cabinet shall inform the household in writing of the disqualification penalties for committing an IPV each time the household applies for benefits.

Section 9. Procedures for Appeal. In accordance with 7 C.F.R. 273.16(e)(8)(ii):

- (1) Further administrative appeal procedures shall not exist after an:
 - (a) Administrative disqualification hearing determines that an IPV was committed; or
 - (b) Individual waives the right to an administrative disqualification hearing;
- (2) A cabinet determination of an IPV shall not be reversed by a final order from a subsequent fair hearing; and

(3) An individual determined to have committed an IPV may seek relief in a court having appropriate jurisdiction pursuant to KRS 13B.140.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The "Correspondence from the Office of Attorney General dated April 5, 2012", April 5, 2012;

(b) "FS-80 (EF), Notice of SNAP Suspected Intentional Program Violation", 05/21[12/15];

(c) "FS-80 (TR), Notice of SNAP Suspected Intentional Program Violation", 5/21;

(d) "FS-80, Supplement A (EF), Voluntary Waiver of SNAP Administrative Disqualification Hearing", 11[05]/21[12/15];

(e) "FS-80, Supplement A (TR), Voluntary Waiver of SNAP Administrative Disqualification Hearing", 11[05]/21; and

(f)[(d)] "FS-111, Supplemental Nutrition Assistance Program [Deferred Adjudication] Disqualification Consent Agreement", 05/21[9/14].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dcbs/Pages/default.aspx>.

MARTA MIRANDA-STRAUB, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 10, 2021

FILED WITH LRC: September 14, 2021 at 8:00 a.m.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621, phone 502-564-6746, fax 502-564-7091, email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact persons Laura Begin and Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures used by the cabinet in determining if an intentional program violation (IPV) has occurred in the Supplemental Nutrition Assistance Program (SNAP) and the penalties that shall be applied for an IPV.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for determinations and penalties regarding SNAP IPV's.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by establishing criteria for recipient claims, collections, and additional cabinet administrative provisions for SNAP.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the criteria for recipient claims, the hearing process, and additional administrative provisions used by the cabinet in the administration of SNAP.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation revises language in the incorporated material that are used in the fair hearing process based on recommendations from the Office of the Inspector General, Kentucky Legal Aid, the Kentucky Equal Justice Center, and the USDA Food and Nutrition Service. The revised language is more clear and easily understood regarding intentional program violations. This administrative regulation and two of the incorporated forms are being further revised in response to public comment received. The “FS-80, Supplement A (EF), Voluntary Waiver of SNAP Administrative Disqualification Hearing”, 11/21, and the “FS-80, Supplement A (TR), Voluntary Waiver of SNAP Administrative Disqualification Hearing”, 11/21, are being amended to reference the FS-80 form that accompanies these forms, include wording relating to the waiver being optional, and to state that the signature is not required for those wishing to have a hearing. The purpose of these form revisions is to simplify the language and clarify steps in the claims and hearings processes while adhering to all federal requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clearly inform recipients of hearing rights and penalties associated with misusing SNAP benefits.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the authorizing statutes through its enhancement of notification of hearing rights and processes, penalties, and additional administrative provisions used by the cabinet in the administration of SNAP.

(d) How the amendment will assist in the effective administration of the statutes: The amendment conforms to the authorizing statutes through its clarification and enhancement of hearing rights, penalty notification, and additional administrative provisions used by the cabinet in SNAP.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of March 2021, there were 289,841 active SNAP households in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This amendment will require no new action on the part of SNAP applicants or recipients. The amendment only affects the notices sent out by the cabinet when there is a suspected intentional program violation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to recipients associated with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, communication to SNAP recipients will be clearer and notification of hearing rights and penalties will be provided in easily understood wording.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be minor one-time costs in system changes.

(b) On a continuing basis: No ongoing expenses are anticipated as a result of this amendment as the new forms will replace the forms currently used.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Administrative functions are funded at a 50% state and 50% federal match rate. The funding has been appropriated in the enacted budget.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding required to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 7 C.F.R. 271.4, 273.16

2. State compliance standards. KRS 13B.170, 194A.010, 194A.050

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 271.4, 273.16

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 13B.170, 194A.010, KRS 194A.050, 7 C.F.R. 271.4, 273.16.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government during the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government during subsequent years.

(c) How much will it cost to administer this program for the first year? Minor one-time costs will be associated with system changes.

(d) How much will it cost to administer this program for subsequent years? No new or additional costs are necessary to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation: